



Purpose

- ✓ The purpose of the 30-day permanency hearing is to decide whether to approve, modify, or reject the permanency plan where a child has been determined to be within the jurisdiction of the CPA, *and* aggravated circumstances were found – Idaho Code §§ 16-1619(6)(d) & 16-1620; IJR 44
- ✓ Where aggravated circumstances are found, reasonable efforts to reunify are not required. The purpose of the permanency plan is to 1) provide a systematic analysis of all the options for the child's permanent placement, to ensure selection of the option that best meets the needs of the child; 2) provide the "road map" for prompt, successful, and permanent placement of the child; 3) define "reasonable efforts" to finalize the permanency plan, and 4) provide a mechanism for holding the agency accountable. Idaho Code § 16-1619(6)(d); IJR 44(3)

BEST PRACTICE RECOMMENDATION:

Open the hearing by explaining the purpose of the hearing in plain language

When

- ✓ Within 30 days after the adjudicatory hearing. Idaho Code § 16-1619(6)(d)
- ✓ The agency must file and serve the permanency plan at least five days prior to the permanency hearing. Idaho Code § 16-1629(9)

BEST PRACTICE RECOMMENDATION:

Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date

Who Should Be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Child's guardian or other legal custodian, if applicable
- ✓ Assigned caseworker
- ✓ Indian custodian, child's tribe, and tribal attorney
- ✓ County prosecutor or deputy attorney general
- ✓ Attorney for parents (separate attorneys if conflict warrants)
- ✓ Guardian ad litem, attorney for GAL and/or attorney for child
- ✓ Age-appropriate children
- ✓ Foster parents
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s) if applicable

PRACTICE NOTE:

Foster parents are entitled to notice and an opportunity to be heard at the hearing, but are not parties to the case. Idaho Code Idaho Code 16-1620(2); 45 CFR 1356.21(o).





Permanency Hearing: Aggravated Circumstances

The Permanency Plan

- ✓ The Plan should:
 - identify the current foster care placement for the child, including a statement of why that placement is the least disruptive environment that meets the needs of the child;
 - identify the services to be provided to the child and the foster family, including services to identify and meet any special medical, educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement;
 - define the role of IDHW toward each parent, Idaho Code § 16-1620(3);
 - address **all** options for permanent placement of the child (*see* Permanency Planning Options Benchcard for more information);
 - address the advantages and disadvantages of each option, in light of the child's best interest;
 - include recommendations as to which option is in the child's best interest;
 - specifically identify the actions necessary to implement the recommended option, and deadlines for those actions;
 - address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with whom the child has a significant connection, Idaho Code § 16-1620(3);
 - identify further investigation necessary to identify and/or assess other options for permanent placement, to identify actions necessary to implement the recommended placement, or to identify options for maintaining the child's significant connections.
- ✓ The permanency plan should be verified or in the form of an affidavit and should be incorporated into the order.

Practice Notes:

- ✓ If a child is placed in the custody of IDHW, then IDHW decides where to place the child, subject to judicial review. Under both state and federal law, there are substantial questions as to the nature and extent of that review. It is clear, however, that the court may require IDHW to include the child's placement in the case plan, and reject a case plan that includes an inappropriate placement.
- ✓ A child may not be placed out-of-state without a court order. Idaho Code § 16-1620(8). The court should require that any out-of-state placement be made in accordance with the Interstate Compact on the Placement of Children, Idaho Code § 16-2101, *et seq.*
- ✓ The Indian Child Welfare Act, 25 USC § 1901 *et seq.*, establishes preferences in placement for Indian children. If the child is an Indian child, the case plan should include information demonstrating that the placement complies with ICWA.
- ✓ Please refer to the Idaho Child Protection Manual (which can be found on the Idaho Supreme Court's website) for more information about judicial review of agency placement decisions, and compliance with the ICPC and ICWA.

Best Practice Recommendations:

- ✓ The plan, once approved, or approved with modifications, should be incorporated in an order. For the permanency plan order, use the form provided on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>.
- ✓ In the permanency plan, SPECIFICITY IS EVERYTHING: it provides the road map to successful and permanent placement of the child, it provides the primary mechanism for holding the agency accountable, and it defines "reasonable efforts."
- ✓ Stipulations: Do not approve the permanency plan based solely on the stipulation of the parties. Review the plan to ensure that it is complete and specific
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child, and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act, 25 USC §§1901 *et seq.*, If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1606(c) requires notice to each parent.) If notice has been given and a parent does not appear, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Schedule the review hearing. Order the parents, the assigned caseworker, and the GAL to attend. Require IDHW to file a written progress report prior to the review hearing. The court may also require the GAL to file a written progress report.
- ✓ Enter transport orders for parents (whose rights have not been terminated) or children in state or local custody for the review hearing.

